

DELAWARE HEALTH FACILITIES AUTHORITY

Minutes of Annual Meeting

of

June 13, 2012

A meeting of the Delaware Health Facilities Authority (the "Authority"), was held after proper notice on June 13, 2012, commencing at 12:00 p.m., at the offices of Potter Anderson & Corroon LLP at 1313 N. Market Street, Wilmington, Delaware 19801. The hearings at the meeting are open to the public for comment. The following Authority Members attended: Rolf F. Eriksen, Chair, Desmond A. Baker, George W. Forbes, III, Lisa More, William G. Neaton, and William J. Riddle. Also participating in the meeting from Potter Anderson & Corroon LLP were John J. Quinn, III, Esq., the Authority's Counsel, and Margaret M. Grillet. In attendance in connection with the Bayhealth Medical Center, Inc. ("Bayhealth" or the "Hospital" or the "Borrower") Application for Revenue Bond Financing ("Bayhealth Application") were Terry M. Murphy, President and Chief Executive Officer, Bayhealth; Gerald White, President, Bayhealth Development Corporation; Earl P. Tanis, CFO, Bayhealth; Walter P. McEvelly, Jr., Esq., Stevens & Lee, Borrower's Counsel; Emilie R. Ninan, Esq., Ballard Spahr LLP, Bond Counsel; John E. Cheney, Ponder & Co., Borrower's financial advisor; and Bruce Colbourn, Sr. V.P., PNC Bank, Bond Purchaser. Also present was Emily Abrantes, Public Financial Management, Inc. ("PFM"), Financial Advisor to the Authority. Also present in anticipation of other matters to be brought before the Authority was Cynthia Kaiser, Esq., Richards, Layton & Finger, P.A.

No members from the general public appeared during the course of the meeting.

Mr. Eriksen called the meeting to order at 12:15 p.m. and noted that the meeting is open to the public.

Consideration of the Bayhealth Medical Center Inc. Application for Revenue Bond Financing

The public hearing was then opened with respect to the request by Bayhealth to the Authority to issue revenue bonds in the aggregate principal amount not to exceed \$75,000,000.

The Hospital and its advisors and the Authority Members participated in presentations and discussions regarding details of the Bayhealth Application.

Following the general presentation and discussions, Mr. Eriksen asked Emily Abrantes, PFM, to note its position and make a recommendation to the Members based on the Hospital's financial condition. Ms. Abrantes and Mr. Quinn distributed to the Members copies of PFM's Approval Memorandum. After presentation and discussion, Ms. Abrantes stated PFM's favorable recommendation regarding the proposed bond issuance.

Mr. Quinn advised Mr. Eriksen that he has reviewed the bond documents, which are still currently circulating in draft form for comments, and that he is comfortable with the bond documents in their current form. Mr. Quinn noted that the Authority's Bond Committee, to be appointed, will have further opportunity to consider any material changes to the bond documents.

Whereupon, Mr. Quinn, Counsel to the Authority, presented to the Members the proposed resolution entitled "A BOND RESOLUTION APPROVING A PLAN OF FINANCING AND THE EXECUTION AND DELIVERY OF CERTAIN AGREEMENTS, APPOINTING A COMMITTEE TO APPROVE THE FINAL TERMS OF ONE OR MORE SERIES OF BONDS, AND PROVIDING FOR OTHER MATTERS IN CONNECTION THEREWITH," a copy of which had been previously circulated to the Members and which is attached hereto. Mr. Quinn summarized the proposed resolution for the Members and all in attendance.

Following Ms. Abrantes' presentation and Mr. Quinn's presenting of the proposed resolution to the Members, Mr. Eriksen called for a motion regarding the proposed resolution. Mr. Neaton and Ms. More advised the Chair that they were abstaining from the Members' consideration of the proposed resolution due to their prior or existing relationships to the Hospital and Wells Fargo Bank, National Association, the bond trustee, respectively. Upon motion made by Mr. Riddle and seconded by Mr. Baker, the Authority Members present, except for Mr. Neaton and Ms. More, unanimously approved the resolution in the form attached.

At approximately 1:00 p.m., those in attendance representing *Bayhealth* thanked the Members for their consideration and support and exited the meeting room.

Nanticoke Memorial Hospital, Inc.
Request for Consent to Release of Assets

Mr. Eriksen introduced Cynthia Kaiser, Esq. and asked her to give background information regarding a request by Nanticoke Memorial Hospital, Inc. ("Nanticoke").

Ms. Kaiser explained that Nanticoke has a pending sale of a nursing home facility that it currently owns and operates. This nursing facility operates at a substantial loss to Nanticoke. Because the facility represents a small percentage of Nanticoke's assets (approximately 1%), Nanticoke is interested in selling the facility to an interested buyer who could operate the facility in a more profitable manner.

In conjunction with the possible sale, it was noted that there is a Uniform Commercial Code (lien filing) ("UCC") on file with respect to outstanding Authority bonds that creates a security interest in the gross revenues of the facility. Nanticoke proposes amending the UCC to release the facility assets and enable the sale of the nursing facility. Under the bond documentation and UCC, BNY Mellon and the Authority are the secured parties and, consequently, both must consent to an amendment filing to release the lien on the facility assets that are being sold.

BNY Mellon has already indicated its agreement to consent to the UCC amendment and the release of the lien on the facility assets. Ms. Kaiser proposed preparing an officer's certificate that would document the Authority's consent to release the lien. In response to a question of the Members, Ms. Kaiser pointed out that the Authority's consent for the UCC amendment filing is required, but no consent is needed for the sale of the facility. Mr. Quinn confirmed. Ms. Kaiser added that all conditions to the sale have been met other than the release of the assets from the existing UCC lien.

There was a brief discussion following Ms. Kaiser's presentation. During the course of the discussions, it was pointed out that the proceeds from the sale of the nursing facility are not designated for a specific purpose, but will be used for future capital improvements. Ms. Kaiser pointed out that the sale of the facility and the filing of the UCC amendment will not impact any existing bond covenants.

Mr. Eriksen asked how the value of the nursing facility was determined for purposes of the sale. Ms. Kaiser replied that the value is based on prior audits of the facility's performance. Mr. Quinn observed that, in addition, market forces are in play and it is the Nanticoke Board that ultimately must assess the appropriateness of the purchase price and the transaction's total impact on Nanticoke.

Mr. Quinn circulated a draft resolution for review by the Authority Members. In short, the resolution approves the filing of the proposed UCC amendment releasing the lien on the nursing facility assets.

After further discussion, Mr. Eriksen called for a motion regarding the proposed resolution. Mr. Riddle announced that he was abstaining from the consideration of the resolution. Mr. Neaton moved that, subject to the approval of the Bond Trustee, the resolution approving the UCC filing be approved. Mr. Forbes seconded the motion. The Authority Members present, except for Mr. Riddle, unanimously approved the resolution in the form attached.

At which time Ms. Kaiser thanked the Members for their consideration of Nanticoke's request and exited the meeting room. The Authority Members in attendance then turned to other Authority matters. At this time, Peter Kennedy, CPA, of Cover & Rossiter, certified public accountants ("C&R"), the Authority's auditors, entered the meeting.

2012 Annual Meeting of Delaware Health Facilities Authority

Financial Statements for the Years Ended December 31, 2009 and December 31, 2010

Mr. Eriksen asked Mr. Kennedy to discuss generally the financial statements for the years ended December 31, 2009 and December 31, 2010.

Mr. Quinn distributed to the Members an updated copy of the audited 2009/2010 financial statements marked "PROOF" for review. Mr. Kennedy noted that the financial

statements were prepared in accordance with United States GAAP and that the Auditor's Report opines that the financial statements fairly present the financial position of the Authority.

In response to Members' questions, Mr. Kennedy explained that C&R corresponded with the banks and the hospitals to get the financial numbers used in the financial statements and audit. In the course of doing so, C&R relies in part on auditing work done by the hospital's auditors. C&R does some spot checking of information. For example, the bond amortization schedules were verified to confirm that they were reasonable.

There was a brief discussion regarding the responsibility for choosing an auditing firm for each hospital's financials and the hospital's other financial institutions. It was agreed that the responsibility remains with the hospital boards to choose auditors and financial institutions.

Mr. Eriksen noted that most hospitals are on a June fiscal year and that the Authority is making attempts through the Delaware Legislature to change to a June fiscal year.

Mr. Neaton asked if the financial statements would note that a covenant default existed. Mr. Quinn indicated that the Authority and its auditors do not review hospital financials in order to determine compliance with bond covenants. Mr. Kennedy said that he did not specifically check bond covenant compliance. Mr. Riddle suggested that the Authority consider including in its annual billing letters a request that the hospital confirm that it is in compliance.

Mr. Kennedy resumed his presentation and review of the financial reports. After his presentation was concluded and there were no other questions, Mr. Kennedy left the meeting.

Ms. More moved, seconded by Mr. Neaton, that the financial statements be approved as presented. There was no further discussion. The Members voted unanimously in favor of approving the financial statements as presented.

Minutes from Authority Annual Meeting on October 7, 2010

The Members reviewed the minutes from October 7, 2010 Annual Meeting. Mr. Quinn reminded the Members that there had been no meeting in 2011.

After further discussion and review, Mr. Eriksen asked if there were any changes to be made to the Minutes of the Authority Annual Meeting on October 7, 2010. Upon Mr. Eriksen's request, Mr. Riddle moved that the minutes be approved. The motion was seconded and the Members unanimously approved the minutes of October 7, 2010.

Election of Officers

Mr. Eriksen presented the proposed slate of officers. After motion made by Ms. More, and seconded, the Authority's current officers were re-appointed by unanimous Member approval, as follows:

<u>Office</u>	<u>Officer</u>
Chair	Rolf F. Eriksen
Vice Chair	William G. Neaton
Treasurer	Desmond A. Baker
Secretary	Desmond A. Baker
Assistant Treasurer	William J. Riddle
Assistant Secretary	William J. Riddle

Governor's Report

A draft of the Authority's Annual Report to the Governor was presented to the Members of the Authority for review and approval. The Members discussed the issue of changing the fiscal year of the Authority to coincide with the fiscal year of most of the Delaware hospitals. Mr. Eriksen suggested that the letter include a statement of the estimated savings expected from the change in the fiscal year due to matching up auditing years. Mr. Quinn indicated that it would be difficult to predict the actual savings and he suggested language to the following effect: "A majority of the Authority's bond borrowers are on a June 30 fiscal year. The Authority's financial auditing and reporting process would be streamlined if the Authority's fiscal year were changed to June 30. The majority of hospitals operate on a June 30 fiscal year and for those hospitals the reports made to the Authority's auditors are expected to become easier and less costly for the hospitals."

Mr. Quinn also agreed to raise this subject again with Stephanie Scola, Delaware Director of Bond Finance, and to advise the Governor of the auditing fees that the Authority saved due to its recent switch of auditors.

Mr. Riddle moved that the report to the Governor be approved subject to the change discussed. Mr. Forbes seconded the motion, and the letter, with the changes discussed, was unanimously approved by the Members.

Revenues and Expenses for 2010 and 2011

A summary of the Authority's actual revenues and expenses for the years ending December 31, 2010 and December 31, 2011 was reviewed. Mr. Quinn reported that the Authority's expenses for 2010 totaled \$13,605.66, and for 2011 totaled \$5,588.00. Mr. Quinn advised the Members that these are extraordinarily low expense levels by historical standards, largely due to delayed audits due to the switchover of auditing firms and low levels of bond activity generally. Mr. Quinn further advised the Members that auditing expenses that normally would have been incurred in 2011 were pushed into 2012, as will be seen in the 2012 budget to be presented.

In response to Member request made at a prior Authority meeting, Mr. Quinn also presented to the Members a report of the fees paid to Potter Anderson & Corroon LLP for his work on the five hospital bond transactions that have closed since 2008. In the case of general Authority expenses, these are allocated and billed to the hospitals proportionately based on the hospitals' relative amounts of bonds outstanding. In the case of legal work in connection with a specific bond

transaction, the borrowing hospital is billed directly for the legal fees. The hospitals are advised in advance of the likely legal fees in connection with a bond financing transaction.

Mr. Quinn brought one specific transaction to the Members' attention. Mr. Quinn noted that the Bayhealth 2009 bond refinancing incurred significantly higher fees than usual because the deal was restructured mid-stream after significant legal work had been done, was complicated because of there being multiple series of bonds issue to various borrowers, and involved six public meetings held in connection with approvals of the refinancing.

The summaries of the Authority's revenues and expenses for 2010 and 2011, as reviewed with the Members, is attached.

Budget for 2012 and Hospital Allocations

The Authority's draft proposed operating budget for 2012 in the amount of \$67,619.00 was presented by Mr. Quinn to the Members. Mr. Quinn noted that the projected auditor's fee of \$34,200 includes \$20,800 for auditing work done in 2012 relating to prior years' financials, and \$13,400 estimated for preparation and auditing of year-end 2011 financials. Mr. Quinn also noted that the budget includes \$12,800 in unbilled Potter Anderson legal fees for work relating to 2011, and \$19,000 in estimated legal fees for 2012. Mr. Quinn stated that Potter Anderson's legal fees (other than for specific bond transactions) have typically averaged around \$20,000 to \$25,000 per year.

After further discussion, Mr. Neaton moved that the budget be approved as presented. Ms. More seconded and the Members unanimously approved the budget.

Mr. Quinn then explained that the allocation of the 2012 budget among the hospitals is on a pro rata basis based on the amount of outstanding bonds issued by the Authority for each hospital as of December 31, 2011. The proposed hospital allocation, as presented by Mr. Quinn, was reviewed.

After further discussion, Mr. Riddle announced that he would abstain from the Members' consideration of the hospital allocations. Mr. Neaton moved that the hospital allocations be approved as presented. Ms. More seconded and the Members (other than Mr. Riddle) unanimously approved the budget.

New Business

Ms. More suggested that the Authority consider reviewing its financial advisor's performance, and requested that this be added as a future meeting agenda item for further consideration. Mr. Eriksen suggested that it may also make sense to make a request for proposals to a handful of viable advisors. All of the Members agreed that PFM, the Authority's financial advisor, had done good work for the Authority and been reliable, but occasional performance evaluation is warranted.

There being no further business, the meeting was adjourned at 2:30 p.m.

CERTIFICATION

I, Desmond A. Baker, hereby certify that the foregoing is a true and correct copy of the
Minutes of Annual Meeting of the Delaware Health Facilities Authority held on June 13, 2012.

Desmond A. Baker
Secretary-Treasurer

ATTACHMENT
BOND RESOLUTION

DELAWARE HEALTH FACILITIES AUTHORITY

RESOLUTION

A BOND RESOLUTION APPROVING A PLAN OF FINANCING AND THE EXECUTION AND DELIVERY OF CERTAIN AGREEMENTS, APPOINTING A COMMITTEE TO APPROVE THE FINAL TERMS OF ONE OR MORE SERIES OF BONDS, AND PROVIDING FOR OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, by the Delaware Health Facilities Act (16 Del. Code Ann., §§9201-9222) (herein the "Act"), the Delaware Health Facilities Authority (the "Authority"), a public instrumentality of the State of Delaware (the "State"), was created for the purpose, inter alia, of issuing its revenue bonds in order to further the purpose and intent of the Act by benefiting the people of the State by, among other things, improving their health; and

WHEREAS, Bayhealth Medical Center, Inc. (hereinafter the "Hospital") has filed an application with the Authority dated May 15, 2012 (the "Application") requesting that the Authority issue its revenue bonds in one or more series (the "Series 2012 Bonds") for the following purposes:

I. to refund certain bonds previously issued by the Authority, including the Delaware Health Facilities Authority Variable Rate Refunding Revenue Bonds Bayhealth Medical Center Project Series 2009B Bonds and the Delaware Health Facilities Authority Variable Rate Refunding Revenue Bonds Bayhealth Medical Center Project Series 2009C Bonds, plus redemption premium, if any, and accrued interest, if any; and

II. to pay certain costs of issuance of the Series 2012 Bonds.

WHEREAS, the Hospital has executed and delivered an Expense and Indemnity Agreement dated May 15, 2012 as required by the Authority; and

WHEREAS, the Authority now desires to adopt this bond resolution to approve a plan of financing for the above-mentioned purposes, and to appoint a committee to approve the final terms of the Series 2012 Bonds to be issued by the Authority.

NOW, THEREFORE, BE IT RESOLVED by the Delaware Health Facilities Authority, as follows:

Section 1. The Authority hereby finds and determines:

(a) The purpose of the Act is to provide additional means for health care facilities to expand, enlarge and establish health care, hospital and other related facilities within the State; and

(b) By virtue of the Act, the Authority has been vested with all powers necessary and convenient to carry out the purposes and provisions of the Act, including the power to issue its bonds; and

(c) The Hospital is located within the State and is eligible for assistance from the Authority pursuant to the Act; and

(d) The Hospital will approve and authorize its appropriate officers to execute and deliver (i) the Supplemental Loan Agreement (as defined below), and (ii) the Direct Placement Agreement (as defined below); and

(e) It is desirable and in the public interest for the Authority to issue and sell its revenue bonds for the purpose of effecting a financing substantially as described in Supplemental Indenture No. 3 (as defined below) related to the Series 2012 Bonds presented to the Authority in draft at this meeting; subject, however, to the approval of the Bond Committee hereinafter appointed and compliance with certain limitations set forth in clauses (i)-(ii) of Section 4(b) hereof.

Section 2. (a) In connection with the foregoing and subject to the approval of the Bond Committee hereinafter appointed and compliance with certain limitations set forth in clauses (i)-(ii) of Section 4(b) hereof, the Authority hereby determines to approve the plan of financing substantially as described in Supplemental Indenture No. 3 (as defined below); and (b) the Authority hereby approves Ballard Spahr LLP as Bond Counsel.

Section 3. In connection with the foregoing and subject to the approval of the Bond Committee hereinafter appointed and compliance with certain limitations set forth in clauses (i)-(ii) of Section 4(b) hereof, the Authority hereby approves the form and substance of each of the following agreements and documents, each as presented in draft form at this meeting: (i) Supplemental Indenture No. 3 dated as of June 1, 2012 ("Supplemental Indenture No. 3"), to the Trust Indenture dated as of October 1, 2009 between the Authority and Wells Fargo Bank, National Association, as Trustee; and (ii) the First Supplemental Loan, Mortgage and Security Agreement dated as of June 1, 2012 (the "Supplemental Loan Agreement") to the Loan, Mortgage and Security Agreement dated as of October 1, 2009 between the Authority and the Hospital, all with such changes as may be appropriate to reflect the final terms of the Series 2012 Bonds as determined by the Bond Committee appointed in Section 4 hereof.

Section 4. (a) Pursuant to §9211(c) of the Act, the Authority hereby appoints a Bond Committee (the "Bond Committee") which shall have the powers and authority (which is hereby delegated to the Bond Committee) as set forth in (b) below. The Bond Committee shall consist of: Desmond A. Baker, Rolf F. Eriksen, and George W. Forbes, III. In the event of the inability of any member of the Bond Committee to act with respect to its obligations hereunder, the Chairman of the Authority may appoint a substitute therefor.

(b) The Bond Committee shall have the power and authority to (i) determine the terms of the Series 2012 Bonds, including, without limitation, the aggregate principal amount thereof, provided that the amount shall not exceed \$75,000,000; (ii) determine the maturity date not to exceed 30 years or other dates on which payment of the Series 2012

Bonds shall be due and the terms upon which the Series 2012 Bonds, or any portion thereof, may be redeemed, subject to the provisions of the Act; (iii) otherwise determine any of the matters set forth in §9211 of the Act; (iv) award the Series 2012 Bonds to PNC Bank, N.A., as the initial purchaser of the Series 2012 Bonds for such price or prices and upon such other terms as the Bond Committee shall approve subject to the limitations set forth in this subsection (b); (v) approve the execution, delivery and use of the following documents in substantially the form presented to and approved by the Authority at this meeting with such changes as the Bond Committee shall deem necessary or appropriate in connection with the issuance of the Series 2012 Bonds: (1) Supplemental Indenture No. 3, and (2) the Supplemental Loan Agreement; and (vi) otherwise make such determinations and approve and authorize such documents (including documents with respect to credit enhancement, interest rate exchange, interest rate setting and remarketing of Series 2012 Bonds) and actions as the Bond Committee shall, with the advice of the Authority's counsel and financial advisor, deem advisable, subject however, to the express limitations set forth in clauses (i)-(ii) above. Compliance with the limitations set forth in clauses (i)-(ii) above must be confirmed by Public Financial Management, Inc., the Authority's financial advisor, as a condition to the Bond Committee's approval of the sale of the Series 2012 Bonds.

(c) Actions taken by the Bond Committee pursuant to the authority delegated above shall be taken upon the approval of a majority of the Bond Committee at one or more public meetings called for the purpose. Such meetings may be called by any member of the Bond Committee by written or telephonic notice given to each other member of the Bond Committee; such meetings may be held by telephone conference open to the public.

(d) The authority delegated to the Bond Committee by this Section 4 shall terminate and expire on December 31, 2012.

Section 5. The Series 2012 Bonds and interest thereon shall be limited obligations of the Authority payable solely out of the revenues and receipts to be derived pursuant to the Supplemental Loan Agreement and the Supplemental Indenture No. 3 and shall not constitute a debt or liability of the State or any political subdivision thereof, other than the Authority, nor is the faith and credit or the taxing power of the State or any political subdivision thereof, including the Authority, pledged to the payment of the principal of or the premium, if any, or the interest on the Series 2012 Bonds or other costs incident thereto.

Section 6. Subject to the approval of the Bond Committee and confirmation by Public Financial Management, Inc. of compliance with certain limitations as provided for in Section 4 hereof, the Chairman or Vice Chairman of the Authority, and each of the other officers of the Authority are hereby authorized and directed for and in the name of and on behalf of the Authority to do all acts, sign all documents required or provided for by the Bond Purchase Contract, the Series 2012 Bonds, the First Supplemental Loan Agreement, the Supplemental Indenture No. 3, and to execute and deliver all such additional certificates, instruments and documents and pay all such fees, charges and expenses and to do all such further acts and things as may be necessary, desirable and proper to effect the purposes of the foregoing provisions of this resolution and to cause compliance by the Authority with all of the terms, covenants and provisions of such documents binding upon the Authority.

Section 7. This resolution shall take effect immediately upon its adoption.